

AMOCO PRODUCTION CO.

IBLA 84-113

Decided June 19, 1984

Appeal from a decision of the Eastern States Office, Bureau of Land Management, dismissing a protest against acquired lands oil and gas lease offer ES 28691.

Appeal dismissed in part; State Office decision vacated in part and remanded.

1. Oil and Gas Leases: Applications: Description -- Oil and Gas Leases:
Description of Land

Where an oil and gas lease offer for unsurveyed, acquired lands in the Monongahela National Forest is protested on the basis that the metes and bounds description of the lands sought fails to close, and the protest is dismissed because even though the description does not close, the offer is accompanied by a map clearly showing the desired lands, such dismissal is improper. Notwithstanding the inclusion of the map, a description that fails to close is a defective description which does not entitle the offeror to the award of a lease thereto.

APPEARANCES: Craig P. Hall, Esq., Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Amoco Production Company (Amoco) has appealed from a September 2, 1983, decision of the Eastern States Office, Bureau of Land Management (BLM), dismissing Amoco's protest to acquired lands oil and gas lease offer ES 28691.

On August 17, 1981, Champlin Petroleum Company (Champlin) filed acquired lands oil and gas lease offer ES 28691 for three separate parcels, described by metes and bounds, all part of acquisition tract 122 in the Monongahela National Forest, West Virginia. Amoco filed acquired lands oil and gas lease offer ES 32278 on February 7, 1983. ^{1/} Amoco's offer conflicts with the Champlin offer to the extent it describes two parcels designated in the Champlin offer as parcels 2 and 3. On the same date Amoco filed a protest

^{1/} This offer was amended by Amoco on Sept. 30, 1983, and is deemed filed as of that date.

against offer ES 28691, seeking to preclude the issuance of a lease pursuant to that offer.

In its protest Amoco asserted that parcel 1 in offer ES 28691 was subject to rejection to the extent it included acreage in Amoco lease ES 10096. Amoco also claimed that the Champlin offer was subject to rejection for parcels 2 and 3 because the metes and bounds descriptions for those parcels were defective in that they did not close within acceptable limits.

BLM dismissed the protest stating with respect to parcel 1 that the official records showed no conflict between lease ES 10096 and offer ES 28691. For parcels 2 and 3, BLM admitted that the descriptions did not close, but stated that a more accurate description would require an "on-the-ground" survey. In addition, BLM explained that it felt the descriptions were adequate because maps accompanying the offer clearly delineated the boundaries of the area sought.

Amoco filed an appeal. In its statement of reasons it agreed with BLM that as to parcel 1 of the Champlin offer there was no conflict with Amoco's lease ES 10096. Since Amoco withdrew its appeal as to parcel 1, that part of Amoco's appeal is dismissed. Amoco maintains its appeal as to parcels 2 and 3, however, charging that BLM's holding was incorrect and that it was error to dismiss the protest.

On appeal Amoco asserts that Champlin's descriptions of parcels 2 and 3 are defective because they fail to close within acceptable limits. Quoting from its protest, Amoco states:

The description for parcel No. 2 in the offer fails to close by 140.70 feet. This represents an error in closure of one foot in every 367.68 feet (1/367.68).

The description for parcel No. 3 fails to close by 476.52 feet. This represents an error in closure of one foot in every 78.36 feet (1/78.36).

These calculations, Amoco maintains, are confirmed by a Forest Service report of May 3, 1983, stating that parcel 2 has a closure of 1/368 and parcel 3 a closure of 1/81. Appellant refers us to the Manual of Surveying Instructions (1973 ed.), wherein the limit of closure for public land surveys is expressed by the fraction 1/905, provided that the limit of closure in neither latitude nor departure exceeds 1/1280. Id. at 3-124.

With respect to BLM's statement that maps accompanying offer ES 28691 clearly delineated the boundaries of the areas sought and, therefore, caused the descriptions to be adequate for their intended purpose, Amoco charges that such a view violates the Department's longstanding position that an offer must stand or fall with the description appearing on its face. The accompanying maps cannot assist, appellant contends, in clarifying any ambiguity on the face of the offer.

[1] We find merit in Amoco's protest and, accordingly, vacate BLM's decision of September 2, 1983, as it related to parcels 2 and 3. Champlin's failure to describe parcels 2 and 3 in a manner that would close in a failure to adequately identify the land sought. Duncan Miller, A-27784 (Dec. 22, 1958). Without an adequate description, the acreage of the lands sought is

incapable of computation. Columbian Carbon Co., 63 I.D. 166 (1956). The Department has held on multiple occasions that a description that fails to close is a defective description which does not entitle the offeror to the award of a lease thereto. Harold L. Rowland, A-29092 (Dec. 10, 1969); Charles J. Babington, A-30522 (June 14, 1966); Wayland B. Liscomb, A-28159 (Feb. 24, 1960).

However adequate BLM may have regarded the maps submitted by Champlin pursuant to 43 CFR 3101.2-3(b)(2) (1981), 2/ the fact remains that lease ES 28691 could not issue without some corrections being made to the metes and bounds description. BLM cannot make such corrections. In Bob G. Howell, 63 IBLA 156 (1982), this Board held that not only was BLM not required to alter, modify, or correct erroneous descriptions in offers, but it was without authority to do so, or to construe ambiguities therein in such a way as to make them acceptable. Our reasons for this position were stated in this manner:

First, by "qualifying" [a] deficient first-filed offer which otherwise would be unacceptable, BLM is acting to the prejudice of one who subsequently filed a proper offer which is entitled to statutory priority. Second, in attempting to interpret the true intention of the offeror, BLM runs a risk of doing so improperly, resulting in an action contrary to the offeror's intention, as occurred in B. D. Price, [34 IBLA 41 (1978)]. Third, attempts to resolve such errors and ambiguities in some cases and not in others is violative of the salutary objective of consistent, uniform administration, and can lead to charges of favoritism, discrimination, and prejudice. Fourth, such efforts frequently are administratively troublesome, costly, and time-consuming.

BLM should have rejected Champlin's offer for parcels 2 and 3; consideration of Amoco's offer could then commence. The fact that it is may be difficult to describe the parcels sought does not warrant noncompliance with the regulatory requirement for a proper description. Duncan Miller, A-30788 (Aug. 23, 1967).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal of Amoco is dismissed in part, and the decision of the Eastern States Office is vacated in part and remanded for action consistent herewith.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier Wm. Philip Horton
Administrative Judge

Chief Administrative Judge

2/ This requirement is now set forth in amended regulations at 43 CFR 3111.2-2(d) (1983).

